

IN THE MISSOURI COURT OF APPEALS WESTERN DISTRICT

COMPLETE TITLE OF CASE

JOSEPHINE WILSON,

Appellant,

v.

P.B. PATEL, M.D., P.C., and ROHTASHAV DHIR, M.D.,

Respondents.

DOCKET NUMBER WD78538

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: June 21, 2016

APPEAL FROM

The Circuit Court of Buchanan County, Missouri
The Honorable Weldon C. Judah, Judge

JUDGES

Division IV: Ahuja, C.J., Pfeiffer, J., and Youngs, Sp. J.

CONCURRING.

ATTORNEYS

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Attorneys for Appellant,

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Attorneys for Respondents.



MISSOURI APPELLATE COURT OPINION SUMMARY MISSOURI COURT OF APPEALS, WESTERN DISTRICT

JOSEPHINE WILSON,

Appellant,

v.

P.B. PATEL, M.D., P.C., and
ROHTASHAV DHIR, M.D.,

Respondents.

OPINION FILED:
June 21, 2016

WD78538

Buchanan County

Before Division IV Judges:

Alok Ahuja, Chief Judge, Mark D. Pfeiffer, Judge, and J.
Dale Youngs, Special Judge

Ms. Josephine Wilson (“Wilson”) appeals the judgment, following a jury trial, of the Circuit Court of Buchanan County, Missouri (“trial court”), in favor of defendants P.B. Patel, M.D., P.C., and Rohtashav Dhir, M.D. (collectively, “Dhir”), on Wilson’s medical malpractice claim. Wilson asserted that the esophageal dilation performed by Dhir was medically unnecessary and below the standard of care, because she had a normal esophagus without signs or findings of a stricture or other abnormality and no reason to stretch it. On appeal, Wilson claims instructional, evidentiary, jury venire, and closing argument errors by the trial court.

Wilson claims, in her first point on appeal, that the trial court abused its discretion in refusing to submit to the jury her withdrawal instruction regarding informed consent and, in her second point on appeal, that the trial court abused its discretion in permitting “informed consent” argument by Dhir’s counsel in closing argument.

Wilson’s third point on appeal argues that the trial court abused its discretion in refusing another offered withdrawal instruction in which the subject matter related to instructing the jury that the medical condition of Eosinophilic Esophagitis (“EoE”) and any discussion of it were withdrawn from the case. And, in the fourth and fifth points on appeal, Wilson argues that the trial court erred in permitting Dhir’s expert witness, in his redirect testimony, to “comment on the summary portion [of the American Society for Gastrointestinal Endoscopy (“ASGE”) guidelines] transform[ing] his testimony into ‘evidence.’”

Wilson contends in her sixth and seventh points on appeal that the trial court abused its discretion in denying her motions to strike, for cause, two venirepersons during jury selection.

AFFIRMED.

Division IV holds:

1. The trial court did not abuse its broad discretion in refusing the withdrawal instruction, considering how much discussion of the informed consent evidence had already been introduced by both parties prior to the request for a withdrawal instruction. Similarly, where both parties had introduced evidence on the topic of informed consent and Wilson did not object to Dhir's counsel's argument related to that evidence, the trial court did not err in failing to *sua sponte* prohibit Dhir's counsel's closing argument commentary on the informed consent topic.

2. The trial court did not abuse its discretion in permitting Dhir's expert witness's redirect testimony concerning the ASGE guidelines relating to the significance of an EoE diagnosis, or lack thereof, where it was Wilson, not Dhir, that had introduced the relevance of the topic of EoE in the first instance. Likewise, it was not an abuse of discretion for the trial court to refuse Wilson's proffered withdrawal instruction on the topic.

3. The trial court did not abuse its discretion in denying the motions to strike two venirepersons for cause, given both venirepersons made "unequivocal assurances of impartiality," and the trial court was able to personally observe the credibility of the venirepersons when the statements were made.

Opinion by: Mark D. Pfeiffer, Judge

June 21, 2016

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